

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

In the Matter of	)	
	)	
Distribution of 2004, 2005, 2006,	)	Docket No. 2012-6 CRB CD 2004-
2007, 2008 and 2009 Cable	)	2009 (Phase II)
Royalty Funds	)	
	)	
In the Matter of	)	
	)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-
Royalty Funds	)	2009 (Phase II)
	)	

**DECLARATION OF BRIAN D. BOYDSTON IN SUPPORT OF  
INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO JOINT  
MOTION IN LIMINE AND MOTION FOR  
SUMMARY DISPOSITION AS A PAPER PROCEEDING**

I, Brian D. Boydston, declare as follows:

1. I am over 18 years of age, a partner of Pick & Boydston, LLP, the attorney of record for Worldwide Subsidy Group LLC (a Texas limited liability company) dba Independent Producers Group ("IPG") in the above referenced actions and am personally familiar with the facts stated herein and, if called upon could competently testify thereto.

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2. By email of January 19, 2018, counsel for the Motion Picture Association of America (“MPAA”) requested that the parties consent to make this a paper proceeding, and on January 20, 2018, the SDC agreed thereto. See a true and correct copy of the email string of those dates, attached hereto as **Exhibit A**. Initially, IPG did not agree. However, on March 21, 2018, i.e., two weeks ago, IPG *agreed* to submission as a paper proceeding. Nonetheless, the moving parties then declined. See a true and correct copy of that email, attached hereto as **Exhibit B**.

3. In this proceeding, neither the MPAA or SDC even requested in discovery that IPG produce the prior testimony that it had designated in this proceeding. Of the testimony that WSG primarily intends to rely in the hearing scheduled for April 9, 2018, the “complete” testimony of such witnesses equals 4,638 pages, most of which is largely irrelevant.

4. In correspondence dated March 29, 2018, MPAA counsel Lucy Plovnick first stated to me:

“As you know, during the hearing, the parties are allowed to file new cross examination exhibits 24 hours prior to being offered.”

See a true and correct copy of that email, attached hereto as **Exhibit C**. I

questioned whether this was accurate, and whether it was a correct interpretation of the Judges' March 27, 2018 order, and the MPAA (and SDC) persisted, stating on March 30, 2018:

“Regarding my statements on cross examination exhibits, I am referring to Section 351.10(g) of the Judges regulations and the sentence at the bottom of the first page of the Judges' March 27 scheduling order, which states that any new proposed exhibits must be filed 24 hours in advance of being offered during the hearing. Taken together, these two provisions require any new exhibits to be used in cross examination to be filed in eCRB and exchanged among the parties 24 hours in advance of being offered into evidence during the hearing. This is also the practice followed by the Judges in the recent Allocation Hearing.”

See a true and correct copy of that email, attached hereto as **Exhibit D**.

5. On the same day, Ms. Plovnick provided the MPAA exhibit list, but qualified the following:

“Please note that this exhibit list does not include potential cross examination exhibits, which the Judges' regulations and the March 27, 2018 order permit the parties to exchange and file in eCRB during the hearing 24 hours in advance of being offered.”

See a true and correct copy of that email, attached hereto as **Exhibit E**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 5, 2018, at Port Canaveral, Florida.

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Brian D. Boydston

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of April, 2018, a copy of the foregoing was sent by electronic mail and next day mail to the parties listed on the attached Service List.

\_\_\_\_\_/s/\_\_\_\_\_  
Brian D. Boydston

### **MPAA REPRESENTED PROGRAM SUPPLIERS**

Gregory O. Olaniran, Esq.  
Lucy Holmes Plovnick Esq.  
Mitchell, Silberberg & Knupp LLP  
1818 N Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20036

### **SETTLING DEVOTIONAL CLAIMANTS:**

Matthew MacLean  
Michael Warley  
Jessica Nyman  
Pillsbury, Winthrop, et al.  
1200 17<sup>th</sup> Street, NW  
Washington, D.C. 20036

# EXHIBIT A

**DECLARATION OF BRIAN D. BOYDSTON IN SUPPORT OF  
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From: "MacLean, Matthew J."  
Sent: Jan 20, 2018 10:24 AM  
To: "Plovnick, Lucy"  
Cc: "'arnie@lutzker.com' (arnie@lutzker.com)" , "Brian D. Boydston (brianb@ix.netcom.com)" ,  
"Dominique, Alesha" , "Olaniran, Greg"  
Subject: Re: 2004-2009 Cable and 1999-2009 Satellite Phase II, Request for Consent to Move Hearing  
Dates, and in the Alternative For a Paper Proceeding

Lucy,

The SDC would consent to a paper proceeding in the 2004-09 cable and 1999-2009 sat case, if acceptable to the Judges, of course.

As for a delay in the 2010-13 allocation proceeding, my strong hope is that you can work out a different resolution that doesn't require the immense disruption of a delay, and my firm belief is that there are many such possible resolutions available.

We will work out a delay if absolutely necessary, but we have to carve out the period of March 21 through April 6.

Matt

Sent from my iPhone

**Matthew J. MacLean** | Partner

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street NW | Washington , DC 20036-3006

t 202.663.8183

[matthew.macleane@pillsburylaw.com](mailto:matthew.macleane@pillsburylaw.com) | [website bio](#)

On Jan 19, 2018, at 7:26 PM, Plovnick, Lucy <[lh@msk.com](mailto:lh@msk.com)> wrote:

Matt, Arnie, and Brian,

Currently the hearing in the 2004-2009 Cable and 1999-2009 Satellite Phase II proceeding is scheduled to commence on April 9, 2018. MPAA would like to seek the consent of SDC and IPG to ask that the Judges move the Phase II hearing to a later date, in order to accommodate scheduling of the 2010-13 Cable Allocation Phase hearing during April 2018. Please let us know if you will consent to such a motion. Additionally (and as a potential alternative to asking the Judges to reschedule the 2004-2009 Cable and 1999-2009 Satellite Phase II hearing yet again), MPAA was wondering if all parties would stipulate to have the Judges convert the case to a paper proceeding. Given the current posture of the case, it occurs to us that a paper proceeding might actually be more efficient for all parties to the Phase II case (and the Judges) than holding a hearing.

Please let us know if SDC and IPG will consent to either moving the Phase II hearing, or stipulate to converting the Phase II case to a paper proceeding.

Thanks,

Lucy



## EXHIBIT B

**DECLARATION OF BRIAN D. BOYDSTON IN SUPPORT OF  
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SUMMARY DISPOSITION AS A PAPER PROCEEDING**

**From:** ["Brian D. Boydston, Esq." <brianb@ix.netcom.com>](mailto:brianb@ix.netcom.com)

**To:** "goo@msk.com" <goo@msk.com>, "lhp@msk.com" <lhp@msk.com>, "matthew.maclean@pillsburylaw.com" <matthew.maclean@pillsburylaw.com>, "michael.warley@pillsburylaw.com" <michael.warley@pillsburylaw.com>

**Subject:** 2012-6 CRB CD 04-09 and 2012-7 CRB SD 99-09

**Date:** Mar 21, 2018 11:22 AM

Dear Counsel,

With regard to the above referenced hearings, IPG is agreeable to making it a paper proceeding.

Brian Boydston

# EXHIBIT C

**DECLARATION OF BRIAN D. BOYDSTON IN SUPPORT OF  
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SUMMARY DISPOSITION AS A PAPER PROCEEDING**

From: "Plovnick, Lucy"  
Sent: Mar 29, 2018 1:23 PM  
To: Michelle Boydston , "Olaniran, Greg" , "[matthew.maclean@pillsburylaw.com](mailto:matthew.maclean@pillsburylaw.com)" , "[michael.warley@pillsburylaw.com](mailto:michael.warley@pillsburylaw.com)" , "[arnie@lutzker.com](mailto:arnie@lutzker.com)" ([arnie@lutzker.com](mailto:arnie@lutzker.com)) , "Dominique, Alesha"  
Cc: "Brian D. Boydston, Esq."  
Subject: RE: March 30th Disclosurer

Brian - MPAA is prepared to make our disclosures tomorrow, March 30, as the Judges ordered. However, we would agree to the extension you request to delay disclosures until April 2 if you can confirm to us that your only witness will be Dr. Cowan, and that your only direct case exhibit will be Dr. Cowan's amended written direct testimony. Thus, the only new information we would find out on April 2 would be your time estimate for Cowan's direct examination. As you know, during the hearing, the parties are allowed to file new cross examination exhibits 24 hours prior to being offered.

Lucy

## EXHIBIT D

**From:** "Plovnick, Lucy" <[lh@msk.com](mailto:lh@msk.com)>  
**Date:** March 30, 2018 at 1:37:28 PM EDT  
**To:** Michelle Boydston <[mdboydston@gmail.com](mailto:mdboydston@gmail.com)>, "[matthew.maclean@pillsburylaw.com](mailto:matthew.maclean@pillsburylaw.com)" <[matthew.maclean@pillsburylaw.com](mailto:matthew.maclean@pillsburylaw.com)>, "Olaniran, Greg" <[goo@msk.com](mailto:goo@msk.com)>, "[michael.warley@pillsburylaw.com](mailto:michael.warley@pillsburylaw.com)" <[michael.warley@pillsburylaw.com](mailto:michael.warley@pillsburylaw.com)>, "Dominique, Alesha" <[amd@msk.com](mailto:amd@msk.com)>, "[arnie@lutzker.com](mailto:arnie@lutzker.com)" (<[arnie@lutzker.com](mailto:arnie@lutzker.com)>) <[arnie@lutzker.com](mailto:arnie@lutzker.com)>  
**Subject:** RE: 99-09

Brian,

Regarding my statements on cross examination exhibits, I am referring to Section 351.10(g) of the Judges regulations and the sentence at the bottom of the first page of the Judges' March 27 scheduling order, which states that any new proposed exhibits must be filed 24 hours in advance of being offered during the hearing. Taken together, these two provisions require any new exhibits to be used in cross examination to be filed in eCRB and exchanged among the parties 24 hours in advance of being offered into evidence during the hearing. This is also the practice followed by the Judges in the recent Allocation Hearing.

We disagree with you that written direct and rebuttal testimony need not be marked as exhibits and offered into evidence during the hearing. We believe the Judges expect the parties to mark these documents as exhibits and offer them into evidence.

Regarding Jonda Martin, if SDC also is willing to waive any cross examination of her during the hearing, then we will agree to present her direct testimony as an exhibit and not call her as a live witness. SDC, please let us know if you intend to cross examine Ms. Martin.

Regarding Dr. Cowan, MPAA is not prepared to waive cross examination of him at this time.

Thanks,

Lucy

# EXHIBIT E

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From: "Plovnick, Lucy"  
Sent: Mar 30, 2018 7:28 AM  
To: "Brian D. Boydston (brianb@ix.netcom.com)" , "MacLean, Matthew J. (matthew.maclea@pillsburylaw.com)" , "arnie@lutzker.com" (arnie@lutzker.com)" , "Warley, Michael A. (michael.warley@pillsburylaw.com)" , "Nyman, Jessica T. (jessica.nyman@pillsburylaw.com)"  
Cc: "Dominique, Alesha" , "Olaniran, Greg"  
Subject: MPAA March 30, 2018 Disclosures, 2004-2009 Cable and 1999-2009 Satellite (Phase II)

Brian, Matt, and Arnie,

The Copyright Royalty Judges' March 27, 2018 Order Setting Prehearing Schedule, requires participants to exchange witness lists, times estimates for direct examination of witnesses, and exhibit lists on March 30, 2018. In compliance with this order, MPAA is exchanging its witness list, time estimates for direct examination, and our current exhibit list with IPG and SDC.

MPAA's witness list and direct examination time estimates for the 2004-2009 Cable and 1999-2009 Satellite Phase II hearing scheduled April 9-12, 2018 are as follows:

<b>MPAA WITNESS</b>	<b>DIRECT EXAMINATION TIME ESTIMATE</b>
Jonda K. Martin	30 minutes
Paul B. Lindstrom	60 minutes
Jeffrey S. Gray, Ph.D.	90 minutes

MPAA's current exhibit list for the April 9-12, 2018 hearing is attached to this email. Please note that this exhibit list does not include potential cross examination exhibits, which the Judges' regulations and the March 27, 2018 order permit the parties to exchange and file in eCRB during the hearing 24 hours in advance of being offered.

Thanks,

Lucy



## Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the DECLARATION OF BRIAN D. BOYDSTON IN SUPPORT OF INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO JOINT MOTION IN LIMINE AND MOTION FOR SUMMARY DISPOSITION AS A PAPER PROCEEDING to the following:

Devotional Claimants, represented by Arnold P Lutzker served via Electronic Service at arnie@lutzker.com

MPAA-Represented Program Suppliers, represented by Alesha M Dominique served via Electronic Service at amd@msk.com

Signed: /s/ Brian D Boydston